Supreme Court
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AUG 15 1996
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No. 96-144

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In the Supreme Court
of the
United States

October Term 1995

Radha R. Murty Narumanchi Petitioner

vs.

Wafeek Abdelsayed Respondent

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RESPONDENTS' BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF JURISDICTION

The respondent does not believe the Supreme Court can exercise jurisdiction in this matter since this petition does not qualify for review under 28 U.S.C. Section 1257(a), because the petitioner failed to properly raise for review the State or Federal constitutional questions at the trial level and before the Connecticut Appellate Court. 28 U.S.C. Section 1257(a) requires a petitioner to establish this court has jurisdiction over the issues raised in the petition. In addition, the subject matter of the questions raised by petitioner do not fall within those matters that may be reviewed by the Supreme Court.

STATEMENT OF THE CASE

Course of Proceedings in State Court

The respondent commenced a civil action in Connecticut State Superior Court on August 8, 1989 seeking money damages from the petitioner for defamation. The petitioner falsely accused the respondent of plagiarism. After a jury trial on the issues, a verdict in favor of the respondent was returned to recover from the petitioner $15,000.00 in damages.

The petitioner moved to set aside the verdict on the limited grounds that the evidence did not establish clear and convincing proof of malice and because the failure to retract a libelous statement should not have been considered as evidence of malice.

The motion was denied by trial Judge Flanagan. The petitioner then appealed to the Appellate Court on the grounds

that the trial court improperly denied the motion for directed verdict based on the lack of evidence of actual malice and because the trial court erred in its instruction to the jury that the respondent need not prove actual injury to his reputation.

The Appellate Court refused to review the second ground of appeal because petitioner failed to file a request to change and/or failed to take an exception to the jury charge on that issue at the trial level.

The Appellate Court sustained the verdict and judgment of the trial court. (Petitioners brief 3 - App. - 16 App.)

The petitioner then requested reconsideration for reargument, which was denied by the Appellate Court.

Subsequently, petitioner filed a petition for Certificate to Review with the Supreme Court of the State of Connecticut. That petition raised, for the first time, the constitutional questions. The petition was denied and a subsequent Motion for Reargument or Reconsideration and/or in the Alternate Motion for Reargument Em Banc was filed and denied by the Supreme Court of the State of Connecticut.

Petitioner then filed his Petition for Certiorari with the United States Supreme Court.

MISSTATEMENT IN THE PETITION

Pursuant to United States Supreme Court Rule 15.1, the respondent brings the following misstatements of facts contained in the petition to the attention of the court.

Petitioner's special defenses at the trial court level did not raise any State

or Federal constitutional challenges.

Petitioner's motion for directed verdict was based on the alleged insufficiency of evidence to support a finding of actual malice.

Petitioner's motion to set aside the verdict raised the alleged inadequacy of evidence for a finding of malice and an error in the charge for the instruction that a failure to retract a libelous statement could be considered evidence of malice.

Petitioner's appeal also did not raise any State or Federal constitutional questions but only the issues of (1) an inadequate jury instruction on the elements of defamation and (2) insufficiency of evidence as to proof of malice. The first issue was not reviewable because petitioner did not request a change on this part and/or did not take exception to the change.

Petitioner falsely states in the statement of the case that he was threatened by the respondent during a meeting.

Petitioner also falsely states that the Constitution of the United States contains requirements to designate the respondent as a "Public Official".

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

The Supreme Court of the United States will not grant a petition for writ of certiorari based on 28 U.S.C. Section 1257(a) regarding the constitutionality of a state statute or a violation of a constitutional right, privilege or immunity unless there is a formal judgment by the highest court of the state on the issues raised within the

petition.

Where the constitutional issues were not raised at the trial court level and on appeal from the jury verdict, the state Appellate Courts lack jurisdiction over these issues not presented at the trial level.

The practice rules of the State of Connecticut precludes the Appellate Courts from considering any claims of error raised on appeal which were not distinctly raised at trial. (Petitioner's Petition of Writ of Certiorari 13-app).

In addition, the Supreme Court of the United States lacks jurisdiction to consider constitutional questions which were not timely and properly raised and decided in the state court below. Yee V. City of Escondido, 503 U.S. 519,523-533 (1992). Where the state courts are deprived of the opportunity to pass upon the issue of constitutionality the petitioner is estopped from raising the issue in a writ of certiorari. Snonks V. New Jersey, NH 1970, 90 S. CT 1563, 398 U. S. 71, 26 L. Ed 2d 54. Where the issue was not presented for review to the state courts in such a manner that it was necessarily decided by the highest state court, the United States Supreme Court has no power to consider the issue. Street V. New York, N. Y. 1969, 89 S. Ct. 1354, 394, U. S. 576, 22 L. Ed 572.

The petitioner's effort to have this court review errors set out in questions 3 and 4 of the petition must be denied for the foregoing reasons.

The Appellate Court's decision located in the petitioner's appendix is helpful in determining just what issues the petitioner's attorney raised on appeal. There were no issues raised

regarding State or Federal questions of constitutionality. No where in the issues presented in the petitioner's Connecticut Appellate brief is there a mention of constitutional violation of State or Federal law.

Thus, the Petition for Writ of Certiorari cannot now be used as a vehicle to raise issues which were never properly raised, presented and decided by the State of Connecticut courts.

In addition, the decision of the Appellate Court of Connecticut as contained within the petitioner's appendix rests on adequate non-federal grounds and the writ for certiorari should be denied for this additional reason. U.S. ex rel Pascal V. Burke D. C. P.A. 1950, 90 F. Supp. 868

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted

Brian M. Gildea